METHANI v. PERIANAYAGAM

[A. C. J. (Wee Chong Jin J.) March 17, 1959]

[Singapore — District Court Appeal No. 8 of 1958]

Landlord and Tenant — Tenancy by estoppel — Plea of continuous occupation whether sufficient plea of tenancy by estoppel.

The doctrine of tenancy by estoppel is that a tenant may not question his landlord's title and, conversely, a landlord having by his offer of a tenancy induced a tenant to enter into (or remain in) occupation and to pay rent, cannot deny the validity of the tenancy by alleging his own want of title to create it. Where the facts justify the creation of a tenancy by estoppel, it follows that the relationship of landlord and tenant is created between the parties to the estoppel.

In this case the defendant in his defence pleaded that he has been continuously in occupation for the past 15 years as a tenant.

Held: the defence had sufficiently raised the plea of tenancy by estoppel.

Cases referred to:—

(1) *E. H. Lewis & Son Ltd.* v. *Morelli* [1948] 2 All E.R. 1023 at p. 1024.

(2) *Morton* v. *Woods* (1869) L.R. 4 Q.B. 304.

(3) *Jolly* v. *Arbuthnot* (1859) 4 De G. & J. 224.

DISTRICT COURT APPEAL.

M. Karthigesu for the appellant.

A. N. Mitra for the respondent.

Cur. Adv. Vult.

Wee Chong Jin J.: This is an appeal by the plaintiff against the judgment of the learned District Judge dismissing his claim for possession of the left half portion of premises known as No. 378-35 Changi Road, Singapore.

In arguing the appeal, counsel for the plaintiff states the facts to be not in dispute and to be as follows:— The premises were built by the plaintiff on land belonging to the R.A.F. and licensed to the plaintiff. The defendant had been let into occupation by the plaintiff of the left half portion in 1941. He contends, on these facts, that though the letting had all the attributes of a tenancy, it lacked the estate in land which is a necessary incident of a tenancy in that the plaintiff had himself only a licence from the owners of the land and therefore had himself no estate in land out of which to create a tenancy in the defendant. His argument is that there can be no letting of the premises, or any part thereof separate from the land on which the premises stand and that therefore the letting to the defendant by the plaintiff who was only a licensee of the land amounted in law only to a licence and not a tenancy.

The defendant's contention is that the relationship of landlord and tenant has been created in this case by the letting to him and he is therefore a protected tenant under the Control of Rent Ordinance (Cap. 242). Section 2 of the Control of Rent Ordinance defines:

"tenancy" as meaning "any lease, demise, letting or holding of premises whether in writing or otherwise, by virtue whereof the relationship of landlord and tenant is created, but does not include the letting or hiring of furnished rooms with board"; and "premises" as meaning "any dwelling house, flat, factory, warehouse, office, counting house, shop, school and any other building whether of permanent or temporary construction in which persons are employed or work and any part of any such building let or sublet separately and includes any land whereon any such building is or has been erected with the consent of the landlord but does not include any new building built or completed after the 7th day of September, 1947".

It would appear from these definitions that any letting or holding of any part of a dwelling house, etc. let separately by virtue whereof the relationship of landlord and tenant is created is a tenancy protected by the Control of Rent Ordinance.

In this case there can be no question that there is a letting or holding of a part of a dwelling house let separately and the substantial point to be decided is whether the relationship of landlord and tenant has been created by this letting or holding.

Counsel for the plaintiff contends that the relationship of landlord and tenant is purely an English common law notion and I entirely agree that this is so. It would therefore appear at first sight that the plaintiff, being only a licensee of the land on which these premises stand, had no estate or interest in the land out of which to carve a tenancy. Upon this principle of the common law has however been grafted an exception, namely, the doctrine of tenancy by estoppel. The doctrine is that a tenant may not question his landlord's title and, conversely, that a landlord having by his offer of a tenancy induced a tenant to enter into (or remain in) occupation and to pay rent, cannot deny the validity of the tenancy by alleging his own want of title to create it (see Harman J. delivering the judgment of the Court of Appeal in *E. H. Lewis & Son Ltd.* v. *Morelli*[1] at p. 1024). In my view, where the facts justify the creation of a tenancy by estoppel, it follows that the relationship of landlord and tenant is created between the parties to the estoppel. Support for this view may I think be found in the observations contained in the same judgment delivered by Harman J. which I have just cited.

On this view it follows that in my opinion the appeal must necessarily fail but it remains to consider two further contentions on behalf of the plaintiff. The first contention is that estoppel has not been pleaded by the defendant. The facts which are not now in dispute show that the defendant has been in occupation and paying rent for over 17 years during which period of time a rent control ordinance in some form or another has been in continuous operation and which has protected and continue to protect tenants from being dispossessed otherwise than in accordance with the provisions of such an ordinance. Without, as I think, running counter to the well established rules as to pleading where estoppel is relied on, I am of the opinion that the plea of tenancy by estoppel which doctrine has been described as one arising by intendment of law from the relationship of landlord and tenant (see Kelly C.B. in *Morton* v. *Woods*[2]; citing Lord Chelmsford in *Jolly* v. *Arbuthnot*[3]) has been sufficiently raised by the defendant in his defence where it is pleaded that he has been continuously in occupation for the past 15 years as tenant.

The other contention advanced on behalf of the plaintiff is that, assuming the defendant was not precluded from relying on the doctrine of tenancy by estoppel, he cannot be estopped from saying that he could not by law create a tenancy. I understand counsel's argument to be that the doctrine of tenancy by estoppel cannot apply to a case such as this where the grantor had himself no estate or interest in the land and so could not in law create a tenancy but in my opinion the short answer to it is that in such a case the doctrine does apply and that the law is that in such a case the grantor notwithstanding he had no estate or interest in the land is estopped by intendment of law from denying that he had created a tenancy.

For all these reasons, therefore, the appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Allen & Gledhill; S. C. Goho & Co.*

YEOH BAH KOW v. PUBLIC PROSECUTOR

[A. Cr. J. (Rigby J.) December 31, 1959]

[Penang — Criminal Appeal No. 35 of 1959]

Criminal Law and Procedure — Criminal Breach of Trust — Penal Code, s.408 — Charge — Essence of — No rebuttal of accused's testimonial.

The very essence of a charge of criminal breach of trust is that the offender, being entrusted with moneys belonging to another person, has converted such moneys to his own use.

Where there is no adequate or proper evidence rebutting an accused's testimony as to the manner in which he spent the moneys in the course of the business, and establishing that he had converted those moneys, which formed the subject matter of the charge, to his own private use, a conviction thereon cannot be supported.

CRIMINAL APPEAL.

A. Jayadeva for the appellant.

L. A. Massie (Deputy Public Prosecutor) for the respondent.

Rigby J.: This was an appeal from a decision of the learned President of the Sessions Court, sitting in Penang, whereby the appellant was convicted of criminal breach of trust, contrary to section 408 of the Penal Code, and sentenced to eighteen months' imprisonment.

The particulars of the charge upon which he was convicted were that he "between the 1st day of May, 1959, and 27th day of August, 1959, at No. 7, Weld Quay, Penang, being a manager in the employment of Ahmad bin Haji Jamal, the proprietor of Penang Travels, Penang, and in such capacity, being entrusted with certain property, to wit, cash and cheque deposits, amounting to $6,503.80 did commit criminal breach of trust in respect of the said property".

During the hearing of the appeal Mr. Massie, Deputy Public Prosecutor, intimated to the Court that for reasons to which I will later refer he did not feel that he cou'd support the conviction.

I accordingly allowed the appeal and quashed the conviction and sentence.

The facts of the case were briefly as follows: On or about the beginning of May, 1959, the complainant, as the result of representation made to him by the appellant, commenced a business known as Penang Travels, and appointed the appellant as Manager thereof. The business, in its inception, was financed by the complainant. From its early stages the business appears to have been run in a thoroughly unsatisfactory manner. For example, cash deposits were received by the appellant, as Manager, from various members of the public, as deposits for tours to Japan and other foreign countries. Nothing appeared to be done by the appellant to implement these bookings, with the result that the complainant himself was compelled to refund these fees to the dissatisfied and irate customers on various dates towards the end of August. Let it be said at once, however, that the two receipt books produced in evidence during the hearing of the case established that these deposits had, in fact, been paid over by the appellant to the complainant and actually received by the latter. He was, therefore, only repaying to the dissatisfied customers moneys that he had received, but in respect of which no action had been taken by the appellant, as Manager of the business, to implement the undertakings he had given to the customers. However, on the 27th August, in consequence of the complaints made to him, the complainant himself made a report to the Police, as a result of which these proceedings were instituted.

The complainant, Ahmad bin Haji Jamal, is himself the cashier of the Federal Transport Company, Butterworth. In that capacity he is, of course, a man used to handling and recording of accounts. Although the business of Penang Travels commenced on the 1st May it was not registered until the 15th September — after these proceedings had started. No separate banking account was opened by the complainant in the name of Penang Travels, and such cheques as he received from the appellant arising out of the business, he put into his own bank account. But the most remarkable feature of his evidence was that on his own admission he had no idea of the moneys he had advanced to the appellant to start the business. According to his evidence — and it seems incredible that it should be so — he had kept no accounts of such moneys as he had advanced and he relied entirely for that figure on the appellant's own statement. The sole evidence as to the moneys the appellant had received from the complainant consisted of a receipt — Ex. P. 24 — dated 24th August, 1959, and signed by the appellant. It is worded as follows:—

"PENANG TRAVELS
(Transportation Arranged)
LAND - SEA - AIR.
Local, Malayan & Foreign Tours.

24th August, 1959.

Received from Mr. Ahmad bin Haji Jamal, Proprietor, Penang Travels, Penang, the sum of Dollars Fifteen Thousand, and Fifty-nine and cents Eighteen ($15,059.18)